

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NPF FRANCHISING, LLC, et al.,)	CASE NO. 1:18 CV 277
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
)	MEMORANDUM OPINION
SY DAWGS, LLC, et al.,)	<u>AND ORDER</u>
)	
Defendants.)	

This matter is before the Court on the Request for Extension of Time to Intervene, File Objections on Behalf of Buchalter Law Firm and Request to Withdraw as Counsel of Record (Docket #242) filed by Plaintiff, NPF Franchising, LLC, on October 14, 2020, along with the Motion to Withdraw as Counsel for Plaintiffs (Docket #244) filed by NPF on October 19, 2020.

This case was initially filed by NPF against Defendant, SY Dawgs, LLC, on February 2, 2018. Attorneys Warren and Fox of the Buchalter Law Firm became Counsel of Record for NPF on August 24, 2018. The Court need not rehash the litigation history of this case for purposes of the instant Request/Motion and one need only review the Docket to understand that despite the fact that NPF eventually moved to voluntarily dismiss its case with prejudice on July 5, 2019 (Docket #211), in the face of an imminent ruling on the Parties' dispositive motions, the Buchalter Law Firm and its attorneys were Counsel of Record during a string of discovery disputes which underlie SY Dawgs' Motion for Fees and Costs (Docket #212), filed on July 12,

2019.

On July 18, 2019, this Court granted NPF's motion to voluntarily dismiss this case with prejudice. (Docket #213.) On July 26, 2019, SY Dawgs' Motion for Fees and Costs was referred to the Magistrate Judge William H. Baughman, Jr. for a Report and Recommendation. (Docket #218.) Oral argument was held on July 13, 2020. (Docket #237.) On September 24, 2020, the Magistrate Judge issued his Report and Recommendation (Docket #239), recommending that NPF and its lawyers of record be held jointly and severally liable for SY Dawgs' attorneys fees and costs in this case.

On October 8, 2020, NPF (represented by the Buchalter attorneys) and SY Dawgs filed their respective Objections to the Magistrate Judge's Report and Recommendation (Docket #s 241 and 240). On October 14, 2020, less than a week after filing its Objections to the Report and Recommendation, NPF filed its Request for Extension of Time Until November 16, 2020 to Intervene, File Objections and Request to Withdraw as Counsel of Record (Docket #242) and five days later, on October 19, 2020, filed its Motion to Withdraw (Docket #244). In the face of an imminent decision by the Court, this time on the issue of attorneys fees, Buchalter requests to withdraw as Counsel, arguing that "a conflict of interest has arisen between Buchalter and Plaintiff;" that "Plaintiff has failed to pay, communicate, and/or otherwise cooperate with Buchalter over a prolonged period throughout the litigation;" and, that "NPF's representation has failed to substantially fulfill and obligation financial or otherwise."

The Court was unaware of any purported deterioration in the relationship between NPF and Buchalter prior to Buchalter's October 14, 2020 filing. The Docket reflects ongoing communication and active representation up until the filing of the instant Request/Motion; Counsel for SY Dawgs indicates that it discussed settlement with opposing Counsel as late as


October 12, 2020; and, there is no indication that the Court was ever informed of a breakdown in communications or other circumstances warranting withdrawal at any time prior.

Buchalter's asserted "conflict of interest" likely stems from the fact that the Magistrate Judge recommends joint and several liability for attorney fees and costs, as Buchalter now seeks to withdraw, intervene, and file objections on its own behalf. However, Buchalter has known since the time NPF initially filed its Motion for Attorney Fees and Costs on July 12, 2019 – well over a year ago – that SY Dawgs sought attorneys fees and costs not only from NPF, but also from Buchalter as a discovery sanction. Buchalter and its attorneys continued to represent NPF throughout proceedings related to SY Dawgs' Motion for Fees and Costs – including throughout briefing, during oral arguments, and in filing objections to the Magistrate Judge's Report and Recommendation on October 8, 2020. For over a year, Buchalter had ample opportunity to address the question of whether Buchalter should be sanctioned for its conduct during this case but failed to do so and never sought to withdraw from the case on the basis of conflict or a breakdown in communications until faced with the possibility of being held liable for fees and costs. All of the issues between the Parties to this case have been litigated and all that remains is a final decision from the Court on the Magistrate Judge's Report and Recommendation. There is no legitimate basis under the facts and circumstances of this case to permit Buchalter to withdraw as Counsel at this late and final stage in proceedings.

Accordingly, the Request for Extension of Time to Intervene, File Objections on Behalf of Buchalter Law Firm and Request to Withdraw as Counsel of Record (Docket #242) and Motion to Withdraw as Counsel for Plaintiff in this Case (Docket #244) are hereby DENIED. Buchalter may file a Supplement to its Objections to the Report and Recommendation no later

than October 30, 2020, should there be any additional information it believes the Court should consider. SY Dawgs shall have 10 days thereafter to file a response.

IT IS SO ORDERED.



DONALD C. NUGENT
Senior United States District Judge

DATED: October 23, 2020